

REMARKS

Reconsideration and withdrawal of the requirement for election of species are respectfully requested in view of the amendment and remarks herewith, which place the application into condition for allowance.

Claims 1-5, 7-9 and 12-38 are currently pending in this application. New claims 31-38 were added, without prejudice, to advance prosecution and to place the claims in condition for allowance. The amendment and the remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents. Support for new claims 31-38 are is found throughout the specification and from the pending claims.

In response to the Requirement for an Election of Species, Applicants elect polyurea as the carrier, fenoxaprop-p-ethyl as the agrochemically active compound surrounded by said carrier, and isoxadifen-ethyl as the further agrochemically active compound, recited in claims 1-5, 7-9 and 12-38. The requirement for this election of species is also respectfully traversed since the species are each related to one another and directed to the same inventive concept which may be simultaneously searched. It is Applicants' understanding that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141.

Applicants respectfully traverse this Requirement for an Election of Species for the following reasons.

Applicants urge that the Requirement is improper as it does not demonstrate that searching all the inventions constitute an undue burden to the Office and because it is contrary to public policy. The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional

invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.* Since the Requirement does not indicate that searching would constitute an undue burden, this requirement is not met.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Requirement constitutes an undue burden to Applicants as well as the public and, thus, is against public policy. If followed, the Requirement would require Applicants to file an indeterminable number of patent applications. In addition, under GATT, the period of exclusivity for any patents, which issue from the divisional application, is greatly reduced. Applicants cannot mitigate against this because the Requirement does not identify the number of inventions present. Similarly, the public is inconvenienced, as they will not know whether or not Applicants will file divisional applications to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

As this paper is being submitted within the one month period for reply set by the July 29, 2002 Office Action, no fee is believed to be due. In the event a fee is occasioned by this paper, the fee may be charged, or overpayment credited to, Deposit Account No. 50-0320.

Accordingly, in view of the foregoing, reconsideration and modification of this
Restriction Requirement is requested and an early action on the merits is earnestly solicited.

Respectfully submitted,

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